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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,864	07/09/2003	Vincent E. Bryan	170134.401C1	1480

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EXAMINER

THANH, LOAN H

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/616,864

Applicant(s)

BRYAN ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11, 14, 15 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 14 is/are rejected.
- 7) ☒ Claim(s) 15 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/09/03, 10/12/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements(IDS) submitted on 07/09/03 & 10/12/04 were filed before the first office action on the merits. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw ( US Patent No. 2,623,521).

Shaw discloses a spinal delivery system to deliver a tool through tissue, the system comprising a tube 17 having a longitudinal axial bore and at a distal tip, an annular surface surrounding a terminal port; a housing 10 secured to a proximal end of the tube 17, the housing 10 having an internal cavity with an aperture formed in a proximal surface thereof opposite the proximal end of the tube; a tool/obturator/stylet 11 sized and shaped to be slidably received within the bore of the tube 17 and having a blunt distal tip 21 portion sized to pass through the terminal port in the distal tip of the tube 17 and a proximal end portion sized to pass through the aperture in the proximal surface of the housing 10, the tool/obturator/stylet 11 mounted in the housing 10 to

move between an extended/first position wherein the distal tip portion 21 extends beyond the distal tip 20 of the tube 17 and a retracted/second position wherein the distal tip portion is withdrawn inside the tube; and a resilient compression member 16 mounted in the housing and configured to engage the tool/obturator 11 when the tool/obturator 11 is at an intermediate position between the extended position and the retracted position to thereby urge the tool into the extended position.

Claims 11, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoon ( US Patent No. 5,226,426).

Yoon discloses a spinal needle system in the same manner as the reference of Shaw above anticipates the claims. Yoon discloses a tube, a housing at the proximal end wherein the tube is connected therewith. See figures 1-3 specifically. The tool has a blunt tip and a spring which biases the tool in an extended position.

### ***Allowable Subject Matter***

Claims 15, 24 are allowable over the prior art of record. The combination of all the elements and including the barb(s) and its structural relationship with all the elements is not taught or obvious over the prior art of record.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yoon ( US 5,292,310 ), Yoon ( Us 5,423,760), and Yoon ( US

5,549,564) are considered to have the same elements as the Yoon ( US 5,226,426) which has been applied to the claims above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

LT